



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – August 17, 2005 – 9:02 a.m.

Mayor Barnett called the meeting to order and presided.

ROLL CALLITEM 1

Present:

Bill Barnett, Mayor

Tamela Wiseman, Vice Mayor (arrived 9:12 a.m.)

Council Members:

William MacIlvaine

Johnny Nocera (arrived 9:04 a.m.)

John Sorey, III

Penny Taylor

Also Present:

Robert Lee, City Manager

Robert Pritt, City Attorney

Tara Norman, City Clerk

Victor Morales, Assistant to the City Manager

Robin Singer, Community Development Director

Stephen Olmsted, Planning Administrator

Tony McIlwain, Planner II

Steven Moore, Chief of PESD

Ann Marie Ricardi, Finance Director

David Lykins, Community Services Director

Buddy Bonollo, Police Officer

Michael Bauer, Natural Resources Manager

Elizabeth Rogers, Recording Specialist

Karen Kateley, Administrative Specialist II

Father Norman Feliz

Jim Boula

Henry Kennedy

John Vega

John Passidomo

Anthony Bruno

Tina Palmese

Michael McDonald

Other interested residents and visitors

INVOCATION AND PLEDGE OF ALLEGIANCE.....ITEM 2

Father Norman Feliz, St. Peter's Catholic Church

It is noted for the record that Council Member Nocera arrived at 9:04 a.m.

ANNOUNCEMENTSITEM 3

You Drink & Drive, You Lose, Labor Day National Crackdown Week, August 19 through September 5; City of Naples Fire Fighter Appreciation Week, August 1 through 7; and Florida Water, Wastewater, and Systems Operators Week, August 15 through 19.

It is noted for the record that Vice Mayor Wiseman arrived at 9:12 a.m.

SET AGENDA.....ITEM 4

MOTION by Nocera to SET AGENDA withdrawing Item 9; continuing Item 11 to 9/21/05 and Item 21 to 9/6/05; renumbering Item 6 as 6-a and 6-b (to include attorney/client session for A&B Charters, Inc., Byron C. Thomas, and Jeffrey

Player v. City of Naples); and removing Items 7-c, 7-e, 7-o, and 7-p from the Consent Agenda for separate discussion and vote. The motion was seconded by Taylor and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

It is noted for the record that Item 7-v was later in the meeting removed from the Consent Agenda for separate discussion and subsequently withdrawn by staff. (See Page 8.)

ORDINANCE Withdrawn by petitioner (See Item 4).....ITEM 9
SECOND READING OF AN ORDINANCE FOR REZONE PETITION 05-R1 FOR PROPERTY LOCATED AT THE AREA OF LAND BOUNDED ON THE EAST BY U.S. 41 NORTH, ON THE SOUTH BY FIFTH AVENUE NORTH, ON THE WEST BY EIGHTH STREET NORTH, AND ON THE NORTH BY SIXTH AVENUE NORTH IN ORDER TO PERMIT REZONING FROM PD, PLANNED DEVELOPMENT TO A NEW PD, PLANNED DEVELOPMENT. Title not read.

RESOLUTION Continued to September 21, 2005 (See Item 4).....ITEM 11
A RESOLUTION DETERMINING FENCE AND WALL WAIVER PETITION 05-FWW4 FROM SECTION 110-37(b)1.a. OF THE CODE OF ORDINANCES WHICH ESTABLISHES MAXIMUM WALL HEIGHT OF SIX FEET IN SIDE YARDS IN ORDER TO ALLOW A 10 FOOT 4 INCH RETAINING AND PRIVACY WALL IN THE SIDE SETBACK AREAS ALONG THE SOUTH PROPERTY LINE LOCATED AT 266 15TH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read. Council Member Taylor recommended that Council review prior action regarding wall waivers in the Port Royal subdivision; she further suggested addressing this matter relative to the new FEMA (Federal Emergency Management Agency) flood control maps due to be implemented in November.

RESOLUTION Continued to September 6, 2005 (See Item 4).....ITEM 21
A RESOLUTION APPOINTING ONE QUALIFIED ELECTOR TO COMPLETE A TERM ON THE CITY COUNCIL, PURSUANT TO SECTION 2.3 OF THE CHARTER OF THE CITY OF NAPLES, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. Title not read.

PUBLIC COMMENT.....ITEM 5
None.

RESOLUTION 05-10898.....ITEM 7-c
A RESOLUTION RATIFYING AND CONFIRMING THE ACTIONS OF THE CITY MANAGER IN ENTERING INTO AN AGREEMENT BETWEEN THE CITY OF NAPLES AND NAPLES DOCK AND MARINE, FOR THE REMOVAL AND REPLACEMENT OF NAVIGATIONAL SIGNAGE AND PILINGS IN NAPLES BAY; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:15 a.m.) who explained that this item should be considered apart from the Consent Agenda because he had requested a waiver of conflict with reference to his legal services in approving the resolution and agreement (Attachment 1). Mr. Pritt then offered to also submit a copy of a waiver that had been approved by Naples Dock & Marine (Attachment 2). He then explained that his sole revisions involved the scope of services in a standard contract, and that he had approved the legality of the contract at the request of the City Manager. Vice Mayor Wiseman however expressed her disapproval of this action and stressed that it should not become commonplace. Mayor Barnett noted the necessity in this instance due to Council's summer hiatus.

Public Comment: None. (9:17 a.m.)

MOTION by Nocera to APPROVE RESOLUTION 05-10898 AS SUBMITTED; seconded by MacIlvaine and carried 5-1 (MacIlvaine-yes, Nocera-yes, Sorey-yes, Taylor-yes, Wiseman-no, Barnett-yes).

RESOLUTION 05-10899.....ITEM 7-e

A RESOLUTION DETERMINING LIVE ENTERTAINMENT PERMIT RENEWAL FOR PADDY MURPHY’S IRISH PUB LOCATED AT 457 FIFTH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:17 a.m.). In response to Council Member Nocera, Mayor Barnett confirmed the presence of the petitioner’s agent, Attorney Michael McDonald.

Council Member Sorey observed that this had been the sole request to extend live entertainment until 1:30 a.m., which he said would be too late an hour. While no complaints had been lodged specifically against Paddy Murphy’s, Mr. Sorey noted, the staff report had listed several calls by employees of the establishment involving both verbal and physical disputes, as well as violation of various City ordinances such as open containers and urinating in public. He attributed many of these instances to the late closing and asserted that cessation of live entertainment at Paddy Murphy’s should be consistent with the 11:30 p.m. imposed on other establishments on the street. He then requested that Steven Moore, Chief of Police & Emergency Services Department (PESD) report specifics of the violations that had occurred relative to patrons of Paddy Murphy’s.

Chief Moore noted the presence of Officer Buddy Bonollo, Community Policing Officer for Fifth Avenue South, assigned on Thursday, Friday and Saturday nights until approximately 3:00 a.m. While the level of activity at Paddy Murphy’s is similar to other establishments that remain open until approximately 2:00 a.m., the staff at Paddy Murphy’s cooperates well with the police department, complaints registered within the past year having not been related to live entertainment. He said that Officer Bonollo had, for example, been called the prior week when an intoxicated person had been refused service at Paddy Murphy’s. In an effort to minimize the need for police services, Chief Moore said, Paddy Murphy’s had also recently initiated a rule for last-call for drinks at 1:30 a.m.

This being a quasi-judicial proceeding, Notary Public Elizabeth Rogers administered an oath to those intending to offer testimony; all responded affirmatively. Council Members then disclosed the following ex parte communications: Wiseman, Nocera, Barnett, Taylor, MacIlvaine/no contact; and Sorey/observed the location.

City Manager Robert Lee announced that technical difficulties with sound transmission were being addressed with the cable television provider.

In response to Council Member Sorey, Officer Bonollo stated that although there are not more calls for service to Paddy Murphy’s than other locations on Fifth, more regular patrols are nevertheless directed at the establishment. He however cited what he described as Paddy Murphy’s proactive approach, ensuring that last-call is at 1:30 a.m. and the establishment is locked at 2:00 a.m.

Public Comment: None. (9:23 a.m.)

MOTION by Wiseman to APPROVE RESOLUTION 05-10899 AS SUBMITTED; seconded by Nocera, and carried 5-1 (MacIlvaine-no, Nocera-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

Council Member Taylor reminded Council that receipt of three complaints registered against an establishment would result in revocation of the live entertainment permit. Council Members Taylor and Sorey however also commended Paddy Murphy's for efforts in cooperating with police.

RESOLUTION 05-10900.....ITEM 7-o
A RESOLUTION OF THE CITY OF NAPLES, FLORIDA, AMENDING THE 2004-05 BUDGET ADOPTED BY ORDINANCE 04-10603; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:24 a.m.) Mayor Barnett noted that Vice Mayor Wiseman and Council Member Sorey had requested that this item be removed from the Consent Agenda for separate discussion and vote.

Referring to supporting documentation (a copy of which is contained in the file for this meeting in the City Clerk's Office), Vice Mayor Wiseman said that aside from Department of Environmental Protection (DEP) approval issues, she had been unaware of the extent of the cost to restore the mooring field. She therefore recommended that discussion focus on the value of reinstatement in light of the \$217,000 cost estimate. Council Member Sorey concurred and also expressed concern regarding restricting use to City Dock tenants, suggesting that the DEP Consent Order and permit open use to anyone.

City Manager Robert Lee explained that usage restrictions are due to the availability of restroom facilities at the City Dock, although expanded use could be requested.

In response to Council Member Sorey, Community Services Director David Lykins listed annual recurring costs such as cleaning of the mooring facilities, a \$14,000 DEP annual lease fee, and a supplemental wet slip fee of \$17,400 also required based on collected revenue.

In further discussion, Council Member MacIlvaine explained that these moorings not only provide anchorage security for individual craft but protection for the City Dock and surrounding vessels due to the danger of damage from boats that are secured by an anchor alone. He also reported numerous contacts from residents south of the anchorage, encouraging reinstatement of the mooring field due to these same safety concerns. Later in the meeting, Council Member Taylor characterized maintaining the mooring field as a type of insurance policy.

At present, various Council Members said, the mooring field may be used solely by City Dock tenants; however, this is temporary, pursuant to the Temporary Use Agreement.

Although the restriction to City Dock tenants is temporary, Director Lykins confirmed that any mariner may anchor to the bottom in the vicinity of the mooring field provided that they do not block the federal channel or channel access. However, he said that there are no assurances that the request to expand usage of the mooring field to other than City Dock tenants would be approved.

Vice Mayor Wiseman and Council Member Taylor expressed concern regarding waiver of the competitive bidding process and selection of Coastal Engineering Consultants, the firm with which past contractual difficulties had been experienced. Natural Resources Manager Michael Bauer explained that staff had approached Coastal Engineering because of its record of having a working relationship with DEP and its experience with mooring fields in southwest Florida. Council Member Nocera therefore expressed support for engaging the firm.

In response to concerns expressed by Council Member Sorey regarding an obligation on the part of the City to request a permit for restoration of the mooring field, City Manager Lee indicated that should Council decide not to pursue the mooring field, the DEP would merely be so advised.

Regarding revenue and expense for operation of the mooring field, Director Lykins confirmed that the City does not make a profit from the enterprise and will document in its report to the DEP such elements as staff time for registration of users, monitoring and maintenance, as well as the amenities provided at the City Dock. In response to Mayor Barnett, Director Lykins confirmed that of the estimated \$11,000 for maintenance, all but \$1,000 is attributable to DEP fees.

In response to Vice Mayor Wiseman, Natural Resources Manager Bauer estimated the Sarasota mooring field at 194 acres, considerably larger than the Naples Bay anchorage, although he said he was unaware of the size of the one in Fort Myers.

Public Comment: (9:41 a.m.) **Jim Boula, 702 Broad Avenue South**, reported that both Vice Mayor Wiseman and State Representative Dudley Goodlette had been instrumental in achieving a Temporary Use Agreement (TUA) with DEP, and commended City Dockmaster Mike Klein for locating substitute mooring hardware. Mr. Boula further observed that the TUA is in force only through the hurricane season, and that the permit application is due on December 1. He also commended both Coastal Engineering and the City's legal counsel in this matter (Ortel, Fernandez, Cole & Bryant, P.A.) and asserted the need for a permanent mooring field for the safety of the boating public. He urged moving quickly due to the permit deadline, despite the projected cost, and noted that the mooring field should not be restricted to City Dock tenants.

Henry Kennedy, Tarpon Road, concurred that public funds should not be expended solely for 85 City Dock tenants and expressed alarm that a boater had been injured when relocating a vessel from the mooring field, having been cited and directed to move by a law enforcement officer. Mr. Kennedy also pointed out that the City could not claim a financial loss on the \$10 per day mooring field fee, since the amenities afforded are enumerated in the applicable Council resolution. While maintaining the mooring field is desirable, he also said that it should be approached correctly, legally and ethically.

Council Member MacIlvaine predicted that the public would be willing to pay a minimum of \$25 for overnight anchorage and recommended that the final permit not restrict usage. Council Member Sorey however stressed that there is no assurance that DEP would consent to usage beyond City Dock tenants. Vice Mayor Wiseman stated that if the restroom availability issue is the reason for the DEP's position, then that provision would not change in a final permit.

In further discussion of mooring field versus traditional anchoring, Council Member Taylor noted that mariners rarely anchor adjacent to vessels that are moored to a connection.

Council Member Taylor made a motion to authorize staff to pay the Department of Environmental Protection a wet slip lease supplemental surcharge of \$17,400. She later amended her motion as embodied below.

MOTION by Taylor to APPROVE RESOLUTION 05-10900 AS AMENDED, deleting Section 4 and correcting the total budget amendment to \$122,000; seconded by Sorey and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

City Manager Lee subsequently clarified that the total amount of funding also encompasses piling and signage issues in Naples Bay.

Council Member Taylor urged that a consensus also be reached as to whether the Council desires to maintain the mooring field, and intends to retain Coastal Engineering.

Consensus of Council to maintain the mooring field; carried 4-2 (MacIlvaine-yes, Nocera-yes, Sorey-no, Taylor-yes, Wiseman-no, Barnett-yes).

Council Member Sorey attributed his negative vote to what he characterized as an exorbitant cost, and Vice Mayor Wiseman said that she believed that the final permit would embody the same restriction unless facilities, such as restrooms are expanded; she also said that she had not been provided with the necessary information to convey an approval. Mayor Barnett requested that the focus now be on obtaining a final permit without usage restrictions.

In response to Council Member Taylor, Natural Resources Manager Bauer explained that the Coastal Engineering cost, which had been based on a Sarasota project, could actually be as low as \$60,000 because survey data and drawings are already in hand and the anchors are already in place. The more information that is submitted, the more the cost would be reduced, he added, and indicated that any services provided to date by Coastal would be minimal. In further discussion, however, Dr. Bauer expressed the view that if Coastal Engineering were retained, the City would be in noncompliance with the DEP Consent Order.

It is noted for the record that the aforementioned Section 4 states: “That the City’s Dock Fund Contractual Services budget, account 460-915-572-31-04 for Fiscal year 2004-05 is increased by \$95,000 for the preparation of a DEP Mooring field application”. City Attorney Pritt read the title that appears below. He also confirmed the need to amend the totals cited in Section 5 of Resolution 05-10900.

MOTION by Nocera to ADOPT SECTION 4 AS A SEPARATE RESOLUTION, and directing staff to do everything possible to ensure that the mooring field may be used by anyone; seconded by MacIlvaine and failed 3-3 (MacIlvaine-yes, Nocera-yes, Sorey-no, Taylor-no, Wiseman-no, Barnett-yes).

City Manager Lee expressed the opinion that the restroom issue is the reason for the constraint on usage of the mooring field and therefore to ensure that the mooring field is available for anyone, additional funding may be needed.

Council Members Sorey and Taylor, as well as Vice Mayor Wiseman attributed their negative votes to the City’s experience with a past contractual relationship with Coastal Engineering.

Mrs. Wiseman also reiterated her dismay at being asked to make a decision with inadequate information. In response to Council Member Sorey, City Attorney Pritt confirmed that when a motion fails 3-3, under the Council's reconsideration policy, either those voting for or against may request that the item be on a future meeting agenda. He then advised that September 7 would be the first time the issue could be reconsidered.

In light of opposition to Coastal Engineering, City Manager Lee inquired as to whether Council would authorize staff to enter into an agreement with another firm familiar with this type of work in light of DEP time constraints.

City Attorney Pritt advised against authorizing staff to retain another firm to complete the work commenced by Coastal Engineering and suggested issuing an RFP (Request For Proposals) as an alternative. Mayor Barnett expressed the view that the DEP would be amenable to an extension and offered to assist City Manager Lee in this regard. Council concurred with Vice Mayor Wiseman that Coastal Engineering would however not be barred from the City's bidding process and that negotiations commence with the DEP to remove the restriction of the mooring field to City Dock tenants. Council Member Sorey recommended determining whether DEP would issue an extension so that the most cost-effective means of providing additional restroom facilities could be determined.

In response to Mayor Barnett, City Manager Lee stated that he would first determine the cost of legal services for consulting with the DEP on the matter and commended the staff for efforts to correct a situation not of their own making. Should an extension from DEP be forthcoming, the Consultants Competitive Negotiations Act (CCNA) process would apply to obtaining engineering services, he added.

Acknowledging Vice Mayor Wiseman's position, Council Member Nocera said that Coastal Engineering would nevertheless be the most affordable firm.

RESOLUTION 05-10901..... ITEM 7-p
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND NABORS, GIBLIN AND NICKERSON, P.A., TO PROVIDE DISCLOSURE COUNSEL RELATED TO THE ISSUANCE OF BONDS; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:24 a.m.) Council Member Taylor stated that she could not support this request based on experience in this regard from prior years, noting that it was in her view incumbent upon the City to complete a Request for Proposals (RFP) process on its own initiative rather than utilizing another agency's process.

City Attorney Robert Pritt added that while he had not been involved in the decision at hand, he had reviewed the Clearwater bid proposed for use and that all of the firms enumerated are reputable. At present, he added, an issuer's counsel is needed in addition to a bond counsel and disclosure counsel. Council Member Taylor clarified that she had not intended to cast aspersions on the firm in question, but rather took issue with the process that staff had elected to follow.

MOTION by Nocera to APPROVE RESOLUTION 05-10901 AS SUBMITTED; seconded by Sorey and carried 5-1 (MacIlvaine-yes, Nocera-yes, Sorey-yes, Taylor-no, Wiseman-yes, Barnett-yes).

RESOLUTION Withdrawn (See also Item 7-o above).....ITEM 7-v
A RESOLUTION RATIFYING AND CONFIRMING THE ACTIONS OF THE CITY
MANAGER IN ENTERING INTO AN AGREEMENT BETWEEN THE CITY OF
NAPLES AND COASTAL ENGINEERING CONSULTANTS FOR ENGINEERING AND
DESIGN SERVICES RELATED TO THE COMPLETION OF A MOORING FIELD
APPLICATION AND PERMIT IN NAPLES BAY; AND PROVIDING AN EFFECTIVE
DATE. Prior to considering the remainder of the Consent Agenda, Vice Mayor Wiseman requested that this item be removed for separate discussion and vote. City Manager Robert Lee subsequently stated that he would immediately cease expenditures in this regard. Although Council Member Sorey made a motion to deny Item 7-v, City Manager Lee requested that Item 7-v be withdrawn.

CONSENT AGENDA

APPROVAL OF MINUTESITEM 7-a
May 31 and June 13, 2005 Workshop and June 1, and June 15, 2005 Regular Meetings, as submitted; and June 13, 2005 Budget Workshop Meeting as amended on Page 6 to correct a typographical error.

SPECIAL EVENTS ITEM 7-b

- 1) Oktoberfest and Sidewalk Sale – The Village on Venetian Bay – 10/27/05
- 2) Halloween Trick or Treat – Ridge Lakes Neighborhood Association – Palm Circle – 10/31/05
- 3) Holiday Entertainment “Christmas Walk” – The Village on Venetian Bay – 11/25/05
- 4) Christmas Boat Parade – The Village on Venetian Bay – 12/01/05
- 5) Holiday Entertainment – The Village on Venetian Bay – 12/08/05
- 6) Halloween Party (private) – 1040 13th Street North – 10/31/05
- 7) Thursdays on Third – Third Street South Association – 09/15, 10/20, 11/17, 12/01, 12/08, 12/15, 12/22, and 12/29/05
- 8) Naples On the Run 20k – Gulf Coast Runners – Mooringline Drive and Crayton Road – 09/18/05

RESOLUTION 05-10902..... ITEM 7-d
A RESOLUTION RATIFYING AND CONFIRMING THE ACTIONS OF THE VICE-
MAYOR AND CITY MANAGER PURSUANT TO APPROVAL OF AN AMENDMENT
TO A 2005 CATEGORY A TOURIST DEVELOPMENT COUNCIL GRANT
AGREEMENT BETWEEN COLLIER COUNTY AND THE CITY OF NAPLES FOR
MAINTENANCE DREDGING OF DOCTOR’S PASS; AND PROVIDING AN EFFECTIVE
DATE. Title not read.

RESOLUTION 05-10903..... ITEM 7-f
A RESOLUTION DETERMINING LIVE ENTERTAINMENT PERMIT RENEWAL
FOR ZOE’S RESTAURANT, LOCATED AT 720 FIFTH AVENUE SOUTH, MORE
PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.
Title not read.

RESOLUTION 05-10904.....ITEM 7-g
A RESOLUTION DETERMINING LIVE ENTERTAINMENT PERMIT RENEWAL
FOR MARIE MICHELLE RESTAURANT ON THE BAY, LOCATED AT 4236 GULF
SHORE BOULEVARD NORTH, MORE PARTICULARLY DESCRIBED HEREIN;
AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 05-10905..... ITEM 7-h
A RESOLUTION APPROVING AN AGREEMENT FOR PURCHASE AND SALE OF
GOODS BETWEEN THE CITY OF NAPLES AND BADGERMETER, INC., FOR THE
PURCHASE OF BADGER WATER METERS; AUTHORIZING THE CITY MANAGER
TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title
not read.

RESOLUTION 05-10906..... ITEM 7-i
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES
AND ASHBRIIT ENVIRONMENTAL TO PROVIDE DISASTER RECOVERY
SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE
AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 05-10908..... ITEM 7-j
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES
AND AAA GENERATOR AND PUMP, INC., TO PROVIDE GENERATOR
MAINTENANCE SERVICES FOR THE PUBLIC WORKS UTILITIES DIVISION;
AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND
PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 05-10909..... ITEM 7-k
A RESOLUTION APPROVING A TWO-YEAR AGREEMENT BETWEEN THE CITY
OF NAPLES AND PROLIME CORPORATION, TO PROVIDE HAULING AND
DISPOSAL OF BIO-SOLIDS FROM THE WASTEWATER TREATMENT FACILITY;
AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND
PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 05-10910..... ITEM 7-l
A RESOLUTION APPROVING AN OPERATIONAL ASSISTANCE AGREEMENT
BETWEEN THE CITY OF NAPLES AND THE COLLIER COUNTY SHERIFF'S
OFFICE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT;
AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 05-10911..... ITEM 7-m
A RESOLUTION RATIFYING AND CONFIRMING THE ACTION OF THE CITY
MANAGER IN ENTERING INTO A SOFTWARE LICENSE AGREEMENT WITH
VISIONAIR INC., FOR THE PURCHASE OF MOBILE FIRE EQUIPMENT; AND
PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 05-10907..... ITEM 7-n
A RESOLUTION APPROVING A SETTLEMENT AGREEMENT IN THE CASE OF
CITY OF NAPLES V. UNITED CONTRACTORS & ENGINEERING CORP. AND
CUMBERLAND CASUALTY & SURETY COMPANY (COLLIER COUNTY CIRCUIT
COURT CASE NO. 02-3484-CA); AUTHORIZING THE PAYMENT OF THE
SETTLEMENT FUNDS; AUTHORIZING THE CITY MANAGER AND CITY
ATTORNEY TO EXECUTE THE NECESSARY DOCUMENTS TO EFFECTUATE THE
SETTLEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 05-10912..... ITEM 7-q
A RESOLUTION RATIFYING AND CONFIRMING THE ACTIONS OF THE VICE-
MAYOR AND CITY MANAGER PURSUANT TO PROCLAMATION/RESOLUTION
05-10897; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 05-10913.....ITEM 7-r
A RESOLUTION APPROVING AN AGREEMENT FOR PURCHASE AND SALE OF
GOODS BETWEEN THE CITY OF NAPLES AND LUMEC C/O R. J. STEEDMAN,
INC., FOR THE PURCHASE OF WALKWAY LIGHTS FOR FLEISCHMANN PARK,
AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND
PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 05-10914.....ITEM 7-s
A RESOLUTION APPROVING AN AGREEMENT FOR PURCHASE AND SALE OF
GOODS BETWEEN THE CITY OF NAPLES AND LUMEC C/O R. J. STEEDMAN,
INC., FOR THE PURCHASE OF STREET LIGHTS FOR THE FLEISCHMANN PARK
PARKING LOTS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE
AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 05-10915.....ITEM 7-t
A RESOLUTION APPROVING A FIRST AMENDMENT TO THE AGREEMENT
BETWEEN THE CITY OF NAPLES AND JOHNSON ENGINEERING, INC., TO
PROVIDE ADDITIONAL PROFESSIONAL DRAINAGE DESIGN SERVICES,
CONTRACT ADMINISTRATION AND TO EXTEND THE COMPLETION DATE FOR
THE PROJECT AT THE EAST END OF FLEISCHMANN PARK; AUTHORIZING
THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT; AND PROVIDING
AN EFFECTIVE DATE. Title not read.

RESOLUTION 05-10916.....ITEM 7-u
A RESOLUTION APPROVING A FIRST AMENDMENT TO THE AGREEMENT
BETWEEN THE CITY OF NAPLES AND JOHNSON ENGINEERING, INC., TO
PROVIDE ADDITIONAL SURVEYING, SITE PLANNING, CONSTRUCTION PLANS
AND DOCUMENTS, AND CONTRACT ADMINISTRATION SERVICES AND TO
EXTEND THE COMPLETION DATE FOR THE PROJECT AT THE WEST END OF
FLEISCHMANN PARK; AUTHORIZING THE CITY MANAGER TO EXECUTE THE
FIRST AMENDMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

MOTION by Nocera to APPROVE THE CONSENT AGENDA with corrected
Page 6 of the June 13, 2005, Budget Workshop meeting minutes; seconded by
Wiseman and unanimously carried, all members present and voting
(MacIlvaine-yes, Nocera-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

END CONSENT AGENDA

ORDINANCE (First Reading).....ITEM 8
AN ORDINANCE REPEALING ORDINANCE 01-9099, ADOPTING A NEW
INVESTMENT POLICY; PROVIDING A SEVERABILITY CLAUSE, A REPEALER
PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:31
a.m.)

MOTION by Wiseman to APPROVE AS SUBMITTED; seconded by Taylor
and unanimously carried, all members present and voting (MacIlvaine-yes,
Nocera-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

ORDINANCE (First Reading).....ITEM 10
AN ORDINANCE ADOPTING THE 2004 EDITION OF THE FLORIDA BUILDING
CODE WITH AMENDMENTS TO CHAPTER ONE, ADMINISTRATION; AMENDING
THE CODE OF ORDINANCES OF THE CITY OF NAPLES BY TRANSFERRING AND
AMENDING ARTICLES I AND II, IN GENERAL AND BUILDING AND TECHNICAL

CODES, EXCEPT SECTION 94-43, CITY OF NAPLES STANDARD FOR FLOODPLAIN MANAGEMENT, OF CHAPTER 94 TO A NEW CHAPTER 80; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:31 a.m.) Regarding recodification of the Code of Ordinances, Mr. Pritt explained that while the City awaits the codifiers from Municipal Code Corporation to execute the first iteration of the revisions, the City had notified Municipal Code of its desire to transfer the aforementioned portions of the Code to a chapter outside the Comprehensive Development Code. Additionally, he recommended revising Section 110 (a) as follows: “(a) A violation of any of the provisions of this Chapter shall subject the violator to the penalties and remedies contained in this chapter and in Section 1-15 of the Code of Ordinances, City of Naples.” Mr. Pritt subsequently anticipated that a discussion of Section 105.15 (demolition permits) would ensue. Mayor Barnett noted that this section of the Ordinance would be considered at a future workshop. City Attorney Pritt advised that, should Council adopt the ordinance, this chapter would likely be reviewed again as part of the recodification process.

MOTION by Wiseman to APPROVE AS AMENDED, Section 110, Violations and Penalties, “(a) A violation of any of the provisions of this Chapter shall subject the violator to the penalties and remedies contained in this chapter and in Section 1-15 of the code of Ordinances, City of Naples” (and with clarifications regarding positioning during recodification). The motion was seconded by Sorey and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

Prior to the vote, and in response to Council Member Taylor, Council Member Sorey explained that he had concurred with Mayor Barnett’s suggestion that the issue of historical contributing structures be discussed in a workshop.

City Attorney Pritt noted for the record that no member of the public had indicated a desire to comment on this proposed ordinance.

It is noted for the record that Items 12-a and 12-b were considered concurrently; although discussion occurred at this juncture, final passage of the respective resolutions did not occur until later in the meeting. (See Page 18.)

RESOLUTION 05-10924.....ITEM 12-a
A RESOLUTION DETERMINING CONDITIONAL USE PETITION 05-CU5 TO ALLOW FOR A TWO-LANE DRIVE-THROUGH BANK WINDOW AT 615 AND 625 9TH STREET NORTH, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; PROVIDING FOR THE CITY CLERK TO RECORD SAID CONDITIONAL USE; AND PROVIDING AN EXPIRATION DATE AND AN EFFECTIVE DATE. Title read concurrently with Item 12-b by City Attorney Robert Pritt (10:36 a.m.)

RESOLUTION 05-10925.....ITEM 12-b
A RESOLUTION DETERMINING A RESIDENTIAL IMPACT STATEMENT FOR PETITION 05-RIS9 LOCATED AT 615 AND 625 9TH STREET NORTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read concurrently with Item 12-a by City Attorney Robert Pritt (10:36 a.m.) This being a quasi-judicial proceeding, Notary Public Elizabeth Rogers administered an oath to those intending to offer testimony; all responded affirmatively. Council Members then disclosed the

following ex parte communications: Wiseman, Nocera, Barnett, Taylor, MacIlvaine/no contact; Sorey/visited the site, but no contact.

Planning Administrator Stephen Olmsted reported that a conditional use permit was being sought to allow a bank drive through at 615 and 625 Ninth Street North, and that a residential impact statement was also needed because the property is adjacent to multi-family residential units. The Planning Advisory Board (PAB) had recommended approval, he said. However, the applicant was being required by the Design Review Board (DRB) to submit revised plans for a three-story office building. Furthermore, Mr. Olmsted said, the medical building portion of the project would not be approved nor building permits issued until the DRB approval of the office building is conveyed.

Council Member Sorey took issue with a lack of information in the documentation as to placement of the bank drive through; therefore, he said that he could not support the petition. City Attorney Pritt cautioned Council to however withhold its decision until the entire case had been presented.

Planning Administrator Olmsted confirmed for Council Member Taylor that the configuration of the structure is similar to the building across the street; namely, primarily medical with a bank and drive-through, although the proportion of medical to office was unknown at that time. He further explained that the petitioner had received an on-street parking allocation through the Community Redevelopment Agency Advisory Board (CRAAB) for 21 spaces (with 63 on site), and the parking requirements had been reviewed and approved, based on “D” Downtown standards. Council Member Taylor stated that, given the proliferation of medical offices in that zoning district, medical should perhaps have the same requirement as that imposed on an art gallery; Planning Administrator Olmsted concurred and advised that the staff would submit such changes to the PAB for review prior to Council consideration.

Mayor Barnett noted that neither the applicant nor his agent were present; however, the item was tabled until later in the meeting when Community Development Director Robin Singer reported that Attorney John Vega, agent for the petitioner, had indicated his belief that approval was complete upon PAB review. It was also learned that Mr. Vega could however be present in approximately 20 minutes. This determination followed a motion to deny by Council Member Sorey; he subsequently withdrew his motion.

Vice Mayor Wiseman said that she agreed with Council Member Sorey that insufficient information regarding the petitions had been provided and noted that a staff condition had been to confirm the status of the alley that would be utilized; she recommended therefore that this information be provided prior to approval. City Attorney Pritt clarified that should Council deny the petition, the petitioner must however either resubmit the petition or recommence the process.

RESOLUTION (Continued)ITEM 13
A RESOLUTION DETERMINING VARIANCE PETITION 05-V2 FROM SECTIONS
102-148 AND 110-39 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES,
WHICH ESTABLISHED A MAXIMUM 30-FOOT HEIGHT FOR NON-HABITABLE
ARCHITECTURAL ELEMENTS IN ORDER TO PERMIT THE CONSTRUCTION OF
A ROOF OVER AN EXISTING OPEN-AIR CUPOLA AT A MAXIMUM HEIGHT OF

31'6", AT 2585 TARPON ROAD, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:46 a.m.). This being a quasi-judicial proceeding, Council offered the following ex parte disclosures: Council Member Sorey said he had visited the site; the remainder of Council Members indicated no contact. Notary Public Elizabeth Rogers administered an oath to those intending to offer testimony; all responded in the affirmative.

Planning Manager Stephen Olmsted explained that the proposed sloped roof over an open-air cupola would exceed the maximum 30-foot height permitted for structures in the "R1-15" Residence District by 1.5 feet. Although an additional five feet is allowed for non-habitable architectural elements, staff recommends denial because the area is in fact accessible from the master bedroom and the applicants have indicated they would utilize the space. Mr. Olmsted said that the request also fails to meet variance criteria, and that there are alternatives to allow for a sloped roof that would not exceed the maximum permitted height. The Planning Advisory Board (PAB) did however recommend approval, he added. Council Member Sorey said he believed the roof would be clearly visible from the street.

John Passidomo, attorney for the petitioners, Keith and Joanne Hussey, stated that the style of the proposed roof would be consistent with and enhance the existing architecture. Noting the additional five feet allowed for such non-habitable elements as chimneys, elevator shafts and stair towers, he asserted that the 18 inch tip of the roof in question actually constitutes less than one percent of the entire roof area, and is in fact clearly allowed by the Code. Attorney Passidomo further contended that the term "habitable" means fit for use as a dwelling place and does not address the issue of access. He also noted that, according to Section 86-205(c)(1), the intent of granting a variance is to provide an exemption where special conditions or circumstances exist, which is consistent and in harmony with the intent of the zoning ordinance, which is the most practical or logical solution, and which will achieve equal or greater aesthetic character than would a literal interpretation of the zoning ordinance. He further noted that there was no opposition to the request, and that staff had actually received two letters of support. He added that the PAB had voted unanimously to recommend approval, and requested that Council do likewise.

Vice Mayor Wiseman however expressed doubt that the request met the criteria for a variance since the plight of the applicant was not due to unique circumstances. Mr. Passidomo however said the Code appears to recommend applying common sense, and reiterated that the PAB had found there to be compliance with the criteria.

Council Member MacIlvaine noted that there appeared to be a difference in the height of the cupola among the exhibits presented and that the angle of the roof over the cupola is greater than the angle of the roof over the house. (Copies of these exhibits are contained in the file for this meeting in the City Clerk's Office.) He then suggested that the applicant instead construct an attractive roof that would not exceed the permitted height. Attorney Passidomo however said that the PAB had considered whether the applicants had exhausted every reasonable alternative, including the possibility of installing a flat roof, and had nevertheless found that the proposed roof would best create aesthetic consistency.

In response to Council Member Sorey, Attorney Passidomo said that he considered the proposed roof to be an architectural embellishment. Community Development Director Robin Singer said that this is a fair and consistent interpretation; namely, that the roof to its peak is part of the height limitation when it is over habitable space. City Attorney Pritt said that according to Section 82-10, an architectural embellishment is a non-habitable design element surmounting a building's roof, including, but not limited to, minor cupolas, towers, and monitors, intended as decorative, non-functional features. Planning Manager Olmsted said staff did not consider the roof to be an architectural embellishment, which Mr. Sorey said the Code appears to support. Council Member Sorey urged that the Council use caution in granting variances, and suggested that the applicants explore other alternatives. Attorney Passidomo however said that he had tried to emphasize the diminutive nature of the request, and reiterated that the proposal is actually the most aesthetically appealing alternative. Planning Manager Olmsted said that the applicant could in fact retain a contractor to build a sloped roof that would comply with the ordinance. He added that there were other photographs available, which he would present, to indicate that the area is indeed habitable and designed for human use and occupation. City Attorney Pritt stated that all evidence must however be brought forward to the Council at that meeting.

Recess: 11:10 a.m. to 11:22 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

Planning Manager Olmsted presented illustrations which he indicated had also been reviewed by the PAB (copies of which are contained in the file for this meeting in the City Clerk's Office). He explained that 25 percent of the area in question is air conditioned and enclosed with plexi-glass to protect the home from the elements; there is also a glass door which leads to a spiral staircase and then directly to the master bedroom.

Council Member Sorey suggested a continuance to allow the applicants to retain an architect to prepare drawings to determine whether following the same slope as the existing roofline would permit the modification without a variance. Attorney Passidomo said he would concur with this or with revising the petition to indicate that the applicants seek the same pitch of the current roof of the house. Council Member Nocera proffered a motion to approve the variance, conditioned upon the aforementioned consistent slope; however, there was no second. Council Member Sorey proffered a motion to continue, requesting that the applicant retain an architect to produce elevations and return to Council only if the roof still failed to meet the height requirement.

Public Comment: None. (11:34 a.m.)

MOTION by Sorey to CONTINUE ITEM 13 TO THE SEPTEMBER 21, 2005, REGULAR MEETING; seconded by Wiseman and carried 6-0, all members present and voting (MacIlvaine-yes, Nocera-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

**RESOLUTION 05-10917.....ITEM 14
A RESOLUTION DETERMINING VARIANCE PETITION 05-V4 FOR A VARIANCE FROM SECTION 110-54 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH ESTABLISHES PERMITTED ENCROACHMENTS INTO REQUIRED SETBACKS, AND REQUIRES REQUIRED YARDS TO BE OPEN AND UNOBSTRUCTED FROM 30 INCHES ABOVE THE GROUND, IN ORDER TO PERMIT AN EXISTING POOL AND TERRACE TO BE RAISED AN ADDITIONAL 19 INCHES AND TO ENCROACH ABOVE THE MAXIMUM PERMITTED 30 INCHES, FOR PROPERTY LOCATED AT 1976 FIFTH STREET SOUTH, MORE**

PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Robert Pritt (11:35 a.m.). This being a quasi-judicial proceeding, Notary Public Elizabeth Rogers administered an oath to those intending to offer testimony; all responded affirmatively. Council Members then disclosed the following ex parte communications: Wiseman, Nocera, Barnett, Taylor, MacIlvaine/no contact; and Sorey/no contact, but visited the site.

Mayor Barnett announced that although the Planning Advisory Board (PAB) had recommended approval, staff recommends denial. Planning Administrator Stephen Olmsted reported that the petitioner, Midwest Homes, had requested a variance to elevate an existing swimming pool 19 inches, which would be above the maximum permitted 30-inch height. Staff had recommended denial because the request does not meet the variance criteria. He also noted that Code amendments in this regard would be considered after the November implementation of revised FEMA (Federal Emergency Management Agency) flood elevation regulations.

Anthony Bruno, agent for the petitioner, explained that the family was, for safety, seeking to eliminate a blind spot whereby the children could not be seen. Although a pool fence could be installed, this situation would still exist. Although Mr. Bruno contended that the swimming pool of the home to the north is at the height requested by the petitioners, Council Member Sorey noted that this was an older home most likely predating the current Code. Mr. Bruno nevertheless contended that other homes constructed in the City within the past year also exceed the build-to line.

Mr. Bruno then reviewed an architectural rendering (a copy of which is contained in the file for this meeting in the City Clerk's Office), indicating placement of the swimming pool and deck in question.

Council Member Nocera made a motion to approve; the motion however failed for lack of a second.

MOTION by Taylor to DENY RESOLUTION 05-10917 due to guidelines for variance (Section 86-205(c)(3) of the Code of Ordinances) not being met; seconded by MacIlvaine and carried 5-1 (MacIlvaine-yes, Nocera-no, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

Prior to the vote, and in response to Council Member Nocera, Mr. Bruno confirmed that the property owners to the south had not objected to the request and explained that the photographs included in the packet (copies of which are contained in the file for this meeting in the City Clerk's Office) clearly indicate that the view of adjacent property owners would be unobstructed. He then reiterated the petitioners' safety concerns, but Council Member MacIlvaine said that small children who do not swim well should be supervised from outside rather than inside the home.

**RESOLUTION 05-10918.....ITEM 6-a
A RESOLUTION AUTHORIZING PROVISION OF LEGAL COUNSEL FOR COUNCIL MEMBER AND FORMER COUNCIL MEMBERS DEFENDING CIVIL RIGHTS LAWSUIT; PROVIDING CONDITIONS AND TERMS; AND PROVIDING AN EFFECTIVE DATE.** Mayor Barnett advised that City Council would enter into an executive session with City Attorney Robert Pritt pertaining to Biasella v. City of Naples, et al, U.S.

District Court, Middle District of Florida, Case No. 2:04-cv-320-FtM29DNF. A copy of the executive session notice is contained in the file for this meeting in the City Clerk's Office.

Executive Session: 11:45 a.m. to 12:12 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

Title read by City Attorney Robert Pritt (12:12 p.m.).

MOTION by Wiseman to APPROVE RESOLUTION 05-10918, AS AMENDED, correcting a typographical error Section 1 (herinbelow); and in Section 2 the following: "The rate payable by the City shall be no greater ... The City shall seek reimbursement from its insurance carrier for all sums so paid." The motion was seconded by MacIlvaine and carried 5-0-1 (MacIlvaine-yes, Nocera-yes, Sorey-yes, Taylor-abstain, Wiseman-yes, Barnett-yes). (See Attachment 3, Form 8B Memorandum Of Voting Conflict For County, Municipal, And Other Local Public Officers).

..... **ITEM 6-b ATTORNEY/CLIENT SESSION PERTAINING TO A&B CHARTERS, INC., BYRON C. THOMAS, AND JEFFREY PLAYER V. CITY OF NAPLES.** Mayor Barnett advised that City Council would enter into an executive session with City Attorney Robert Pritt concerning A&B Charters, Inc., Byron C. Thomas, and Jeffrey Player v. City of Naples, Circuit Court Case 04-2386-CA. A copy of the executive session notice is contained in the file for this meeting in the City Clerk's Office.

Executive Session: 12:15 p.m. to 1:21 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

No action taken.

It is noted for the record that Items 15-a and 15-b were considered concurrently.

RESOLUTION 05-10919.....ITEM 15-a A RESOLUTION DETERMINING LIVE ENTERTAINMENT PETITION 05-LE7 FOR INDOOR ENTERTAINMENT AT THE CAFÉ ON FIFTH LOCATED AT 821 FIFTH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Robert Pritt (1:22 p.m.). This being a quasi-judicial proceeding, Notary Public Elizabeth Rogers administered an oath to those intending to offer testimony; all responded affirmatively. All Council Members then disclosed no ex parte communications with regard to this petition.

Planner Tony McIlwain said that live entertainment was being requested for Fridays and Saturdays from 7:30 p.m. until 10:30 p.m.; there would be no more than four performers, and in most cases just two. He subsequently confirmed that staff recommends approval.

In response to Vice Mayor Wiseman, Tina Palmese, agent for the petitioner, explained that the area is approximately 1,000 square feet. She added that, due to limited space, two entertainers would perform per segment. Furthermore, she confirmed that: 1) outside dining for approximately 18 patrons exists; 2) the petitioner desires to leave one set of doors open, weather permitting; and 3) the music would be amplified by portable devices. The type of entertainment would be a trumpet player, a saxophonist, a keyboardist and an acoustic guitarist. Ms. Palmese explained that the entertainers would be positioned well inside the restaurant.

MOTION by Taylor to APPROVE RESOLUTION 05-10919, AS AMENDED, in Section 2(1) “... limited to no more than ~~four~~ two performers playing indoors...”; and with staff recommendations. This motion was seconded by Sorey and carried 5-1 (MacIlvaine-yes, Nocera-yes, Sorey-yes, Taylor-yes, Wiseman-no, Barnett-yes).

Vice Mayor Wiseman attributed her negative vote to a belief that one performer would be sufficient for the size of the establishment.

**RESOLUTION 05-10920..... ITEM 15-b
A RESOLUTION DETERMINING A RESIDENTIAL IMPACT STATEMENT FOR PETITION 05-RIS11 TO ALLOW LIVE ENTERTAINMENT AT CAFÉ ON FIFTH, LOCATED AT 821 FIFTH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (1:22 p.m.).

MOTION by Sorey to APPROVE RESOLUTION 05-10920 with the same conditions as Resolution 05-10919; seconded by MacIlvaine and carried 5-1 (MacIlvaine-yes, Nocera-yes, Sorey-yes, Taylor-yes, Wiseman-no, Barnett-yes).

**ORDINANCE (First Reading)..... ITEM 16
AN ORDINANCE RELATING TO CANOPY TREES, ADDING A DIVISION 3, CANOPY TREES, TO ARTICLE II, TREE PROTECTION, ADDING SECTIONS 70-70 THROUGH 70-81 TO CHAPTER 70 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF PRESERVING CANOPY TREES ALONG STREETS IN THE CITY OF NAPLES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (1:28 p.m.).

MOTION by Wiseman to APPROVE AS SUBMITTED; seconded by MacIlvaine and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

Prior to the vote, Council Member Sorey received clarification from City Attorney Robert Pritt that, pursuant to the Bert J. Harris, Jr. Private Property Rights Protection Act, should action of the City, including the Code of Ordinances, create an unreasonable or inordinate burden for the development of property, then the City may be liable to pay the difference in value even though it is not in essence a total taking of property. Item 4 on page 6, however, represents an exception that would permit removal of a tree where that would otherwise occur, Mr. Pritt said. Vice Mayor Wiseman also pointed out that the canopy area would be at the front of a lot rather than in the center where it might conflict with construction of a home.

Although Council Member Sorey suggested revising Items 1 and 2 on page 10 to show approval by the City Manager or designee, City Attorney Pritt explained that, as part of the recodification process, the general definitional section would contain an explanation that the term “city manager” would mean the city manager or designee, unless clearly indicated otherwise. Attorney Pritt then expressed the desire, with permission of Council, to at a later date eliminate the term “or designee” from areas throughout the Code of Ordinances.

In response to Council Member Sorey, City Manager Robert Lee confirmed that the Community Services Advisory Board would function as the Tree Board.

City Attorney Pritt clarified that Item e on page 13 refers to Chapter 2 of the Code of Ordinances, which is the Code Enforcement process.

RESOLUTION 05-10921.....ITEM 20-a
A RESOLUTION APPOINTING ONE MEMBER TO THE COMMUNITY SERVICES
ADVISORY BOARD FOR A THREE-YEAR TERM COMMENCING ON AUGUST 21,
2005, AND EXPIRING AUGUST 20, 2008; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Robert Pritt (1:35 p.m.)

MOTION by MacIlvaine NOMINATING JENAH VICTOR; carried 4-2
(MacIlvaine-yes, Nocera-yes, Sorey-no, Taylor-no, Wiseman-yes, Barnett-yes).
(Another nomination of Richard Housh by Council Member Sorey was not
voted on due to the passage of the first nomination.)

Prior to the vote, but following nomination of Mr. Housh, Council Member Sorey noted for the record that he had conferred with Mr. Housh who had indicated that he was committed to attending the meetings and that his attendance would improve over that of the past.

RESOLUTION 05-10922.....ITEM 20-b
A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE NAPLES
(COLLIER COUNTY) METROPOLITAN PLANNING ORGANIZATION FOR THE
BALANCE OF AN UNEXPIRED TERM CONCLUDING FEBRUARY 7, 2006; AND
PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (1:36 p.m.).

MOTION by Taylor NOMINATING MACILVAINE; unanimously carried, all
members present and voting (MacIlvaine-yes, Nocera-yes, Sorey-yes, Taylor-
yes, Wiseman-yes, Barnett-yes).

RESOLUTION 05-10923.....ITEM 20-c
A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE
SOUTHWEST FLORIDA REGIONAL PLANNING COUNCIL FOR THE BALANCE
OF AN UNEXPIRED TERM CONCLUDING FEBRUARY 7, 2006; AND PROVIDING
AN EFFECTIVE DATE. Vice Mayor Wiseman expressed an interest in serving in this capacity. Title read by City Attorney Robert Pritt (1:37 p.m.).

MOTION by Barnett NOMINATING WISEMAN; unanimously carried, all
members present and voting (MacIlvaine-yes, Nocera-yes, Sorey-yes, Taylor-
yes, Wiseman-yes, Barnett-yes).

It is noted for the record that Items 12-a and 12-b were continued from earlier in the meeting and were considered concurrently. (See Page 11.)

RESOLUTION 05-10924.....ITEM 12-a
A RESOLUTION DETERMINING CONDITIONAL USE PETITION 05-CU5 TO
ALLOW FOR A TWO-LANE DRIVE-THROUGH BANK WINDOW AT 615 AND 625
9TH STREET NORTH, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO
THE CONDITIONS LISTED HEREIN; PROVIDING FOR THE CITY CLERK TO
RECORD SAID CONDITIONAL USE; AND PROVIDING AN EXPIRATION DATE
AND AN EFFECTIVE DATE. This being a quasi-judicial proceeding, Notary Public Elizabeth Rogers administered an oath to Attorney John Vega, agent for the petitioner; Mr. Vega responded affirmatively.

Council Member Sorey noted that, with the limited information submitted by the petitioner, he had difficulty comprehending the appearance of the structure and possible implications. Mr. Vega distributed additional materials (copies of which are contained in the file for this meeting

in the City Clerk's Office) but noted that the documents were in fact different from those previously submitted to the DRB which had twice denied the petition. These designs would however be reviewed by the DRB the following Wednesday, he added. Vice Mayor Wiseman expressed concern regarding Council being asked to consider a version of a design that had not yet been considered by the DRB; Council Member Taylor concurred.

Planning Administrator Stephen Olmsted explained that the Code requires that conditional use petitions and residential impact statements be reviewed by the Planning Advisory Board (PAB) and approved by City Council, but that the actions of Council that day would not impede the work that the DRB would be completing the following week. City Attorney Robert Pritt, advised that although Council is not required to act upon the resolutions that day, it may. Planning Administrator Olmsted confirmed that the design just submitted is not part of the Council's approval process.

In response to Vice Mayor Wiseman, Planning Administrator Olmsted explained that the Engineering Department had recommended the two conditions enumerated in Section 2, Paragraph 4, of the resolution and that staff recommends that confirmation of the status of the alley be approved by the Engineering Department.

In response to City Attorney Pritt, Mr. Vega stated that although Council action could be postponed, the DRB had suggested that the petitioner respond to questions regarding off-site parking prior to reappearing. Mr. Vega noted that both the PAB approval and staff recommendation reflect concurrence with the drive-through being contingent upon subsequent DRB approval of the pending design; should DRB deny the design or request redesign of the drive-through element, this approval would be void and resubmission to Council required.

In further discussion, Mr. Vega pointed out that the drive-through is essentially a canopy with a pedestal between lanes for a pneumatic tube. He then indicated that he had shared Vice Mayor Wiseman's concerns regarding the alley, and had subsequently requested an affidavit. He then said that the alley is accessible and exits southward onto Sixth Avenue North and runs northward behind the Randall Stoff building. It is used for parking on both sides by the residential multifamily units immediately to the west, and by the Randall Stoff building, Medical and Sports Rehab, and the Bike Route to the north; the alley then culminates at a T intersection between Pizza Hut and 7-11, and one side of the T runs east to US 41 and the other runs west to Eighth Street.

Council Member Taylor expressed concern regarding ingress and egress onto US 41 North. Planning Administrator Olmsted advised that City Traffic Engineer George Archibald had raised no concerns in this regard. Mr. Vega also noted that ingress and egress to the Randall Stoff building is in fact onto US 41 North. During preliminary meetings, however, the Florida Department of Transportation (FDOT) had informally advised that ingress, but not egress, would likely be approved, although this was not likely to be formalized for an estimated three months, adding that another issue with FDOT concerns alignment of the sidewalks. Mr. Vega pointed out that he had also been advised that the State may not approve the sidewalk plans; however, should the State allow it, the petitioner's first choice would be to follow the Heart of Naples/41-10 ("D" Downtown) requirements.

In response to Council Member MacIlvaine, Mr. Vega said that a double solid line on the diagram was in fact merely pavement markings to line up the vehicles in the drive-through lanes. He then estimated the width of each lane to be 12 feet.

It is noted for the record that Mayor Barnett left the meeting at 1:50 p.m.

MOTION by Nocera to APPROVE RESOLUTION 05-10924 AS SUBMITTED; seconded by MacIlvaine and carried 5-0 (MacIlvaine-yes, Nocera-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-absent).

**RESOLUTION 05-10925..... ITEM 12-b
A RESOLUTION DETERMINING A RESIDENTIAL IMPACT STATEMENT FOR PETITION 05-RIS9 LOCATED AT 615 AND 625 9TH STREET NORTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.**

MOTION by Nocera to APPROVE RESOLUTION 05-10925 AS SUBMITTED; seconded by MacIlvaine and carried 5-0 (MacIlvaine-yes, Nocera-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-absent).

**RESOLUTION 05-10926.....ITEM 17
A RESOLUTION GRANTING A COASTAL CONSTRUCTION SETBACK LINE VARIANCE TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND TO CONSTRUCT A NEW SINGLE-FAMILY RESIDENCE AND DECK, A SWIMMING POOL, LANDSCAPING, EXTERIOR LIGHTING AND A DRIVEWAY WEST OF THE COASTAL CONSTRUCTION SETBACK LINE AT 175 GULF SHORE BOULEVARD NORTH; PROVIDING FINDINGS; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (1:52 p.m.). This being a quasi-judicial proceeding, Notary Public Elizabeth Rogers administered an oath to those intending to offer testimony; all responded in the affirmative. Council Members then disclosed no ex parte communications, although Council Member Sorey reported that his residence is located diagonally adjacent to the property in question, but he anticipated no financial impact.

Natural Resources Manager Michael Bauer explained that an existing residence would be replaced and that he had determined that no natural resources would be adversely impacted.

Brett Moore, Humiston & Moore Engineers, advised that the State Department of Environmental Protection (DEP) is concurrently reviewing the project because permits are also required from that agency; DEP considers the project acceptable, however. Additionally, the project had been found to be in compliance with various components of the City's Comprehensive Development Code for Coastal Construction Setback Line variances, he said, and is located between two projects that had been previously approved by Council and DEP. Both the habitable portion of the structure and the seaward in-ground swimming pool are consistent in location to the adjacent seaward in-ground swimming pools.

MOTION by Nocera to APPROVE RESOLUTION 05-10926 AS SUBMITTED; seconded by MacIlvaine and carried 5-0 (MacIlvaine-yes, Nocera-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-absent).

Prior to the vote, Mr. Moore confirmed that an elevated water feature spills down to an in-ground swimming pool located seaward of the residence.

Vice Mayor Wiseman noted for the record that there were no public speakers.

RESOLUTION 05-10927.....ITEM 18

A RESOLUTION ADOPTING AN INTERIM POLICY FOR PERMITTING IMPROVEMENTS TO CITY ALLEYWAYS BY EITHER PRIVATE PROPERTY OWNERS AND/OR THE CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (1:57 p.m.). City Manager Robert Lee reported that the purpose of the resolution is to have something in place in order to have guidelines whenever a private development may necessitate an adjustment to an alley. Staff had composed the resolution for Council consideration, he added. He then noted that Council Member Sorey had that morning submitted a recommendation for amendments (Attachment 4), which staff had reviewed and approved.

Council Member Sorey explained that he and Carl Kuehner, who had served on a number of City boards, had completed the recommended amendments, primarily in Section 4: 1) an alley change could not go beyond the applicable property line; and 2) drainage must be the financial responsibility of the particular individual wishing to change the alley.

MOTION by Sorey to APPROVE RESOLUTION 05-10927, AS AMENDED
(See Attachment 4); seconded by MacIlvaine and carried 5-0 (MacIlvaine-yes, Nocera-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-absent).

Prior to the vote, City Attorney Pritt noted for the record that the document being approved is the same resolution that had been submitted, with the exception of revisions submitted by Council Member Sorey, which includes replacing the term “improvement” with “change” throughout the document. Additionally, City Manager Robert Lee noted that the “8%” contained in the second “Whereas” clause had been eliminated.

.....ITEM 19
CONSIDER APPOINTING COUNCIL MEMBER NOCERA AS THE VOTING DELEGATE TO THE 79TH ANNUAL FLORIDA LEAGUE OF CITIES ANNUAL CONFERENCE.

MOTION by Sorey to APPROVE; seconded by Taylor and carried 5-0
(MacIlvaine-yes, Nocera-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-absent).

CORRESPONDENCE AND COMMUNICATIONS.....

Council Member Taylor acknowledged receipt of Community Development Director Robin Singer’s report regarding the Wilkinson House. She then advised that she had visited the Wilkinson House that morning and had observed the following: peeling paint on all windows, one gutter inoperative, rust stains on the walls, and several vents beneath the roof either damaged or missing. Miss Taylor further indicated that she had not yet received a response to questions she had previously asked regarding a house on 12th Avenue North. Director Singer apologized, saying that she would forward a written response, and noted that follow-up had been completed.

In response to Council Member Taylor, City Manager Robert Lee stated that the Pelican Bay consent forms had not been received the previous week and were being reviewed in cooperation with the City Clerk’s Office. He then explained that staff had designed a plan to identify all items that needed to be obtained.

PUBLIC COMMENT.....
(2:03 p.m.) None.

ADJOURN
2:04 p.m.

Bill Barnett, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Elizabeth A. Rogers, Recording Specialist

Jessica Rosenberg, Deputy City Clerk

Minutes Approved: 9/21/05



850 PARK SHORE DRIVE
TRIANON CENTRE - THIRD FLOOR
NAPLES, FL 34103
239.649.2714 DIRECT
239.649.6200 MAIN
239.261.3659 FAX
rpritt@ralaw.com

MEMORANDUM

TO: Mayor & Council
FROM: Robert D. Pritt, City Attorney
DATE: August 10, 2005
RE: Naples Dock & Marine Contract
CLIENT 016763.0001
MATTER:

I request a waiver of conflict and request that I be able to sign the agreement and resolution. Due to time constraints in getting the project moving forward the City Manager has proceeded on a fast track (with which I wholly concur). Therefore, he and his designee have moved forward with this contract with this company, which is a client of one of the partners in our firm. The contract and resolution are before council for ratification.

I did not take part in the selection of this company and did not negotiate the contract. I did not know about it until it was submitted in the ordinary course for review prior to going to council. My review is for form and legality. I am getting a waiver from the contractor. If council is reluctant to waive, we can have another attorney engaged for the review. Due to time constraints I did not want to hold this up.

RDP

478313.1.016763.0001

CLEVELAND TOLEDO AKRON COLUMBUS CINCINNATI WASHINGTON, D.C. TALLAHASSEE FORT MYERS NAPLES

www.ralaw.com

ate: 8/30/2005 Time: 10:59 AM To: @ 2131014

R&A Naples Fax

Page: 002

RECEIVED

AUG 12 2005



850 PARK SHORE DRIVE
SUITE 300
NAPLES, FL 34101-3587
239.649.2708 DIRECT
239.649.6200 MAIN
239.261.3659 FAX
banderson@ralaw.com

August 11, 2005

Shawn Maher, Vice-President
Naples Construction, Inc. d/b/a
Naples Dock & Marine
3557 Prospect Avenue
Naples, Florida 34104

Re: Waiver of Conflict of Interest involving City of Naples and
Naples Dock & Marine

Dear Shawn:

As you may know, our firm represents the City of Naples and is cautious about avoiding conflicts of interest and appearances of conflicts. Robert Pritt, one of my partners in the Naples office of Roetzel & Andress serves as the City Attorney and has informed me that the City Council will be considering approval of a resolution ratifying a contract with Naples Dock & Marine for waterway marker and piling installation at its meeting on August 17. While Mr. Pritt did not take part in any negotiations of the contract, as City Attorney he is responsible to approve for form and legality.

The Florida Bar Rules of Professional Conduct adopted by the Supreme Court of Florida govern our actions. Pursuant to these rules, a law firm's responsibility in any representation is to promote the best interests of its client. This role requires the exercise of independent professional judgment on the client's behalf and generally prohibits a law firm from representing interests adverse to any of its clients unless: (1) it is obvious that all affected clients can be adequately represented; and (2) each client consents after full disclosure of the possible effects the multiple representation could have on the exercise of independent professional judgment by the firm attorneys.

It is not permissible under the Rules of Professional Conduct for an attorney or two attorneys in the same law firm to represent opposing sides in the same contractual matter, without waiver. Accordingly, I am requesting that you formally acknowledge that you have been informed about the facts and circumstances surrounding this conflict of interest, and that you

CLEVELAND TOLEDO AKRON COLUMBUS CINCINNATI WASHINGTON, D.C. TALLAHASSEE FORT MYERS NAPLES

www.ralaw.com

ate: 8/30/2005 Time: 10:59 AM To: @ 2131014

R&A Naples Fax

Page: 003

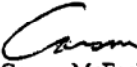
Shawn Maher, Vice-President
August 11, 2005
Page -2-

waive any objection that you may have to our firm's representation of the City of Naples in reviewing and approving the resolution and contract for form and legality.

Please sign a copy of this letter in the space provided below and return it to me at the address listed above. Should you have any questions, please feel free to contact me. Thank you.

Very truly yours,

ROETZEL & ANDRESS, L.P.A.

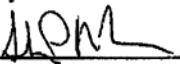


G. Carson McEachern
For the Firm

WAIVER OF CONFLICT OF INTEREST

I have reviewed the disclosure in this letter and waive any conflict in Roetzel & Andress representing the City of Naples in reviewing and if approvable, approving a resolution and contract for waterway marker & piling installation for form and legality.

Naples Construction, Inc.
d/b/a Naples Dock & Marine


By: Shawn Maher, Vice-President

8-10-05
Date:

478342.1.016763.0001

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS	
LAST NAME—FIRST NAME—MIDDLE NAME <i>Taylor, Penelope Ann</i>	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>Naples City Council</i>
MAILING ADDRESS <i>995 13th St N</i>	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY <i>Naples FL</i>	COUNTY <i>Collier</i>
DATE ON WHICH VOTE OCCURRED <i>8/17/05</i>	NAME OF POLITICAL SUBDIVISION: <i>Collier</i>
	MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTEE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Penny Taylor Penelope Ann Taylor, hereby disclose that on August 17, 20 05.

(a) A measure came or will come before my agency which (check one)

- ☒ inured to my special private gain or loss;
- ☐ inured to the special gain or loss of my business associate, _____;
- ☐ inured to the special gain or loss of my relative, _____;
- ☐ inured to the special gain or loss of _____, by whom I am retained; or
- ☐ inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

August 17, 2005 City Council Meeting
Agenda Item: Executive Session:
6a - Attorney/Client Session pertaining to
Joseph Biassella v. City of Naples, Joe
Hermes, Penny Taylor and Fred Tallant
U.S. District Court

August 17, 2005
 Date Filed

Penelope A. Taylor
 Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

I worked with Carl Kuehner on the alleyways resolution and request you consider this draft. The major changes are in #4 for your consideration.

Agenda Item 18

Meeting of 08/17/05

RESOLUTION 05-

JF2

A RESOLUTION ADOPTING AN INTERIM POLICY FOR PERMITTING IMPROVEMENTS TO CITY ALLEYWAYS BY EITHER PRIVATE PROPERTY OWNERS AND/OR THE CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, from time to time City staff receives requests or permit applications to improve existing alleyways that property owners have used or will use for rear access; and

WHEREAS, in utilizing alleyways for access, there may be a need to address major changes in the alleyway to include alleyway width, type surface and alleyway elevations to accommodate driveway and parking facilities in relationship to Federal Emergency Management Agency (FEMA) elevations and Americans with Disabilities Act (ADA) grades; and *(C) renewed 8/90*

WHEREAS, alleyways should be maintained at natural grade or existing grade to the degree practical in consideration of drainage, existing development and existing utilities; and

WHEREAS, any change in the elevation or existing grade of an alley that exceeds a maximum elevation change of 8" (+/-) or an average slope of 2% greater than existing conditions is generally considered a major change; and

WHEREAS, for the purposes of providing guidance to the City staff until such time as the Naples Code can be amended to address major changes to alleys, an interim alley policy shall be adopted.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NAPLES, FLORIDA:

Section 1. Any builder, contractor, or property owner who desires to perform alleyway

construction or major changes to a public alley due to proposed improvements on private property must submit plans and a rights-of-way permit application to the Public Works Department.

Section 2. The Public Works Department will review and process the application in accordance with standards as set forth in this Resolution and as established by Naples Code and shall coordinate all review with the Building Division whenever proposed improvements on private property are planned.

Section 3. Adjacent property owners shall be provided written notice of any proposed major changes to an alley.

Section 4. Any major change that proposed to modify the elevation of an alley by more than 8 inches (+/-), or produces an average change in grade of more than 2% (2 feet of height in 100 feet of length) over existing conditions will require final approval by City Council if any adjoining property owner(s) that will be affected by the alley changes submits a written objection to the proposed improvements. However, in no event shall an alley's existing elevation be modified beyond the boundaries of the applicant's property. Furthermore, the applicant shall be solely responsible for the cost of all proposed improvements, as well as any additional storm drainage which may be required in the alleyway, or on adjoining properties, as a result of the applicant's changes to the alley. If no objections are submitted and the Public Works Director approves all changes, the permit application will be administratively processed.

Section 5. The slope of driveway access to private properties within the public right-of-way shall not exceed ADA Standards of 8 percent.

Section 6. Any application submitted by private property owners for the City to perform major improvements (i.e. paving, crushed

shell, change elevations, etc.) to an alleyway will be processed in the order received and be subject to available City funding and City resources. All requests will be evaluated by the Construction Management Department to determine the extent of improvements within 30 days from receipt. When a request from a property owner(s) to undertake major improvements are denied, the property owner shall have the right of appeal to City Council.

PASSED IN OPEN AND REGULAR SESSION OF THE CITY COUNCIL
OF THE CITY OF NAPLES, FLORIDA, THIS 17TH DAY OF AUGUST
2005.

Bill Barnett, Mayor

Attest:

Approved as to form and
legality:

Tara A. Norman
City Clerk

Robert D. Pritt,
City Attorney